

STATE OF MICHIGAN
COURT OF APPEALS

DERI I. MITCHELL,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER MOTORS
CORPORATION and NORTHWEST DODGE,
INC.,

Defendants-Appellees.

UNPUBLISHED
December 2, 2003

No. 242690
Oakland Circuit Court
LC No. 01-029492-CL

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendants, pursuant to MCR 2.116(C)(10), in this case involving a claim of discrimination in the workplace. We affirm.

On appeal, plaintiff contends that the trial court erred in summarily disposing of plaintiff's claim, where defendants terminated plaintiff as the general manager of one of their dealerships for reasons claimed by plaintiff to be racially motivated. We disagree.

A trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we review the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Stevenson v Reese*, 239 Mich App 513, 516; 609 NW2d 195 (2000). The motion should be granted if the affidavits or other documentary evidence demonstrate that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

Pursuant to the Civil Rights Act, MCL 37.2101 *et seq.*, an employer shall not discharge or otherwise discriminate against an individual, with respect to employment, because of, among other things, race. MCL 37.2202(1)(a). A plaintiff can establish a civil rights violation by either producing direct evidence of racial discrimination or by establishing a prima facie case by which the fact-finder could infer racial discrimination. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). Direct evidence has been defined as "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the

employer's actions.” *Id.* A prima facie case of racial discrimination may be established by demonstrating that the plaintiff suffered an adverse employment action under circumstances giving rise to an inference of prohibited discrimination. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359; 597 NW2d 250 (1999). In establishing a prima facie case, the plaintiff is required to present evidence that (1) he belongs to a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an inference of unlawful discrimination. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998). If the plaintiff establishes a prima facie case, the employer has the burden of coming forward with a legitimate, nondiscriminatory reason for the adverse employment action. *Wilcoxon, supra* at 359. If the employer does so, the plaintiff has the burden of proving that the stated reason was merely a pretext for discrimination. *Id.*

In the instant case, plaintiff claims that he has established a prima facie case of discrimination because he has shown that he belongs to a protected class, that he suffered an adverse employment action, that he was qualified, and that a Caucasian replaced him. Plaintiff further argues that defendants have failed to rebut the presumption of discrimination by not offering a legitimate, nondiscriminatory reason for plaintiff’s termination.

We conclude that plaintiff has stated a prima facie case of racial discrimination because he has presented evidence that he belongs to a protected class, that he suffered an adverse employment action, that he was qualified for the position, and that he was replaced by a Caucasian. Since plaintiff has presented a prima facie case of discrimination, defendants must show a legitimate, nondiscriminatory reason for plaintiff’s termination. We find that defendants have provided evidence that plaintiff was terminated for legitimate, nondiscriminatory reasons. We also find, as a matter of law, that plaintiff failed to show that defendants’ nondiscriminatory reasons were a pretext.

First, plaintiff was chosen for the management position at Northwest Dodge through DaimlerChrysler’s minority dealer program. The Michigan Supreme Court has held that in cases where the person who hired and fired the employee are the same, and where the termination occurs within a short time span following the hiring, a strong inference exists that discrimination was not a determining factor for the termination. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 700; 568 NW2d 64 (1997). The person who chose plaintiff was not the same person involved in the decision to terminate plaintiff; the director of the minority dealer program who was African-American was involved in the termination of plaintiff. However, we find by analogy that the principle enunciated in *Town* is equally applicable here where plaintiff was chosen through the minority dealer program and an African-American was involved in his discharge. It is illogical to conclude that the termination was based on plaintiff’s minority status. Second, there was substantial evidence that plaintiff routinely used a threatening and intimidating management style with his coworkers, which he had been warned about numerous times. Specifically, plaintiff threatened his employees and their families, used profanity on a daily basis, and even brought a grenade (which was actually a toy) to a managers meeting and asked one of the employees to pull the pin. Plaintiff was warned about his managing style, and about being a super manager and wearing himself too thin. There was evidence that, on at least two occasions, plaintiff was dishonest with DaimlerChrysler’s employees. Plaintiff had been warned about his behavior numerous times, yet he continued with his irrational outbursts and

attempted intimidation of employees. This was evidenced by his yelling and slamming his fists on his desk during a meeting with DaimlerChrysler employees only ten days after being warned about his inappropriate behavior.

Plaintiff contends that the three letters written by three of his coworkers that contained false allegations, motivated by race, resulted in his discharge. One of the coworkers admitted that he and the other two coworkers used racist remarks when referring to plaintiff and that the three of them collaborated with respect to the information contained in their letters. This coworker also wrote a letter to plaintiff's boss indicating that he overreacted in his previous letter. However, this letter did not refute the facts for which plaintiff was fired. Even if all the statements contained in the most recent letter were true, they still would not warrant plaintiff's reinstatement of employment. Plaintiff was terminated because of his intimidating, threatening, and inappropriate behavior. This letter makes no indication that plaintiff did not act in a threatening manner. In fact, it verified that plaintiff did act in a threatening, intimidating, and inappropriate manner, as previously alleged. Moreover, when this coworker was questioned at his deposition about his interview with the director of the minority dealer program, as part of the director's investigation into the termination, the coworker stated: "I lied through the entire interview." Plaintiff's reliance on this coworker to essentially support his whole case of racial discrimination, and failure to properly investigate racial discrimination, is woefully insufficient to survive summary disposition.

Plaintiff has demonstrated intimidating, threatening behavior throughout the entire three months that he was employed at Northwest Dodge. Plaintiff had been warned about his behavior numerous times, yet refused to change his management style. Defendants' claim, that plaintiff was terminated because of his improper behavior and not race, was supported by the record. Because defendants' provided a legitimate, nondiscriminatory reason for terminating plaintiff, and because plaintiff failed to demonstrate that the nondiscriminatory reasons were a pretext for discrimination, the trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood
/s/ William B. Murphy
/s/ Janet T. Neff